

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 1999-180

June 2, 1999

FAIRPOINT COMMUNICATIONS CORP  
d/b/a Fairpoint Communications  
Petition for Finding of Public  
Convenience and Necessity to  
Provide Service as a Local Exchange  
Carrier and as a Reseller Interexchange  
Telephone Utility

ORDER GRANTING AUTHORITY  
TO PROVIDE FACILITIES-BASED AND  
RESOLD LOCAL EXCHANGE  
SERVICE, INTEREXCHANGE  
SERVICE AS A RESELLER  
DEDICATED SERVICES  
AND APPROVING SCHEDULE OF  
RATES AND TERMS AND  
CONDITIONS

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants Fairpoint Communications Corp d/b/a Fairpoint Communications (Fairpoint or Company) the authority to provide facilities-based competitive local exchange service in the service area of the Portland and Lewiston exchanges of New England Telephone and Telegraph Company d/b/a Bell Atlantic – Maine; local exchange service as a reseller and local dedicated services in all other areas of Maine except for areas served by independent incumbent local exchange carriers; and intrastate interexchange service as a reseller in the State of Maine. We also approve the Company's Terms and Conditions and Rate Schedules and exempt Fairpoint from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

## **I. APPROVAL OF APPLICATION TO SERVE**

On March 18, 1999, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Fairpoint filed a petition with the Commission requesting authority to provide facilities-based local exchange telephone service in the Maine service area of the New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine and in all unserved areas of the State of Maine, and to provide interexchange service as a reseller in all areas in Maine. On May 12, 1999, Fairpoint filed a letter stating that it wished to restrict its present facilities-based local exchange service territory to the areas served by the Portland and Lewiston exchanges of the New England Telephone and Telegraph Company (NET), but that it wished to provide "local" services as a reseller in all areas of the state except those areas served by independent incumbent local exchange carriers. According to Fairpoint, the latter "local" services include resold local exchange service and the

carriage of local traffic using dedicated facilities such as private lines or special access facilities.

Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require an additional utility to provide service in a location where another utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Fairpoint the authority to provide local exchange and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

Fairpoint's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and facilities-based interexchange services in Maine.

## **II. SERVICE TERRITORY**

### **A. Interexchange Service Authority**

Fairpoint has requested authority to provide interexchange service as a reseller throughout the state. We grant that authority.

### **B. Local Service Authority**

Fairpoint has requested authority to provide facilities-based local exchange service in the areas served by the Portland and Lewiston exchanges of New England Telephone and Telegraph Company (NET) d/b/a Bell Atlantic-Maine. Facilities-based service includes service provided through the use of unbundled network elements obtained from incumbent local exchange carriers. At this time Fairpoint is only willing and able to provide facilities-based local exchange service to areas within the two exchanges named above. We will grant authority to Fairpoint to provide facilities-based local exchange service only within the Portland and Lewiston exchanges of NET d/b/a Bell Atlantic-Maine. Fairpoint's proposed Terms and Conditions, which we approve today, also limit its facilities-based local exchange service offering to the exchanges listed above.

If Fairpoint wishes to expand its facilities-based local exchange service area in the future, it shall seek such approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. Fairpoint shall simultaneously file amended terms and conditions pursuant to 35-A M.R.S.A. § 307 that state its proposed revised service territory. With any such application, Fairpoint shall include information establishing a readiness to provide facilities-based local service within a reasonable period of time in the specifically identified additional areas. It is not necessary for a competitive local exchange carrier (CLEC) with existing authority to present a full application in order to request additional service territory authority for facilities-based local exchange service. The Commission will act expeditiously on any such application and revisions of terms and conditions.

Fairpoint has also requested authority to provide other forms of local service in all areas of the state not served by independent incumbent local exchange carriers, i.e., local exchange service as a reseller and the carriage of local traffic using dedicated facilities. It states that it will offer local services only by those means in those areas. We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale. Fairpoint's authority to provide local services in the areas described above is limited to resold local exchange service and carriage of local traffic using dedicated facilities unless it obtains further authorization from the Commission.

### **III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

We allow the terms and conditions proposed by Fairpoint to go into effect. Fairpoint has used the Commission's expedited process. That process includes standard terms and conditions that comply with Maine law and the Commission's Rules. We have not reviewed the Company's terms and conditions and rate schedules. If there is any conflict between a provision in Fairpoint's terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the first two

pages of the terms and conditions are pages stating that in the event of such a conflict, the statute or the Commission's rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Fairpoint's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by Fairpoint to go into effect.

#### **IV. INTERCONNECTION AGREEMENT(S)**

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for Fairpoint's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent telephone companies are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . . ."

On April 20, 1999, in Docket No. 99-194, the Commission approved an agreement between Fairpoint and New England Telephone and Telegraph Company pursuant to 47 U.S.C. § 252. As a condition of providing local exchange service, Fairpoint must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

#### **V. WAIVER OF PAYMENT OF ACCESS CHARGES**

Our approval of Fairpoint's application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers who have on file with the Commission approved access charge rate schedules. Because the Commission's Chapter 280 requires *each* interexchange carrier to pay applicable access charges, the chapter ordinarily requires both an underlying carrier and a switchless reseller<sup>1</sup> to pay access charges for the same call. Switchless resellers may

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<sup>1</sup>For purposes of applying the access charge waiver, we define switchless resellers as entities which do not own, lease, or control any switching facilities, or

avoid double payment of access by asking the Commission to waive certain sections of Chapter 280.

The Commission has determined that Fairpoint is a switchless reseller. Using the Commission's standard Waiver Request Form (attached to this Order), the Company has asked the Commission to waive the requirement of Chapter 280 that requires it to pay access charges, subject to the conditions and requirements described on the Waiver Request Form. We find that the granting of the waiver upon those conditions is reasonable and grant the waiver subject to the stated conditions. Fairpoint has stated that it will purchase interexchange services from ST Long Distance, which is an affiliated interest of Fairpoint and is also a switchless reseller. ST Long Distance in turn uses IXC Long Distance, which is a facilities-based interexchange carrier, as its underlying carrier. IXC Long Distance, Inc. has certified that it will pay access charges on behalf of Fairpoint.

## **VI. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local exchange service, Fairpoint must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. Fairpoint shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, Fairpoint is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts with affiliated interests, related to Fairpoint's interexchange carrier activities. Fairpoint has requested a waiver from the requirements of Chapter 210, and from 35-A M.R.S.A. §§ 707 and 708. Because Fairpoint's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements.

However, the Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.<sup>2</sup> If Fairpoint resells service to other switched or switchless telephone service providers, the

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private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

<sup>2</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

Company must maintain its records so that it may separately identify those sales.  
Pursuant to Chapter 280, § 11(B), Fairpoint

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below. The exemption from 35-A M.R.S.A. §§ 707 and 708 does not apply to Northland Telephone Company of Maine, Inc., Sidney Telephone Company, Standish Telephone Company, China Telephone Company and Maine Telephone Company, which are an affiliated interests of Fairpoint. Those companies must continue to comply with the requirements of sections 707 and 708 because they are incumbent local exchange carriers, and the Commission actively regulates their rates.

In addition, Fairpoint shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

## **VII. OTHER REQUIREMENTS**

Fairpoint shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

## **VIII. ORDERING PARAGRAPHS**

Accordingly, we

### **O R D E R**

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Fairpoint Communications Corp to provide facilities-based competitive local exchange telephone service in the areas served by the Portland and Lewiston exchanges of New England Telephone and Telegraph Company d/b/a Bell Atlantic – Maine; local exchange service as a reseller in all places in the State of Maine not served by independent incumbent local exchange carriers; the carriage of local traffic using dedicated facilities in all places in the State of Maine not served by independent incumbent local exchange carriers; and interexchange service as a reseller in all areas of the State of Maine;

2. Exempt Fairpoint Communications Corp from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;

3. Exempt Fairpoint Communications Corp from approval requirements of 35-A M.R.S.A. §§ 707 and 708, but Fairpoint shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of Fairpoint or of any entity that owns more than 50% of Fairpoint. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), Fairpoint Communications Corp d/b/a Fairpoint Communications shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. Fairpoint Communications Corp shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Fairpoint shall amend its rate schedules and terms and conditions to reflect any change in identity; and

4. Grant Fairpoint Communications Corp.'s Request for a Waiver of any requirement that it pay access charges, subject to the conditions and requirements stated on the attached Waiver Request Form, including the requirement that a facilities-based underlying carrier authorized to provide interexchange service in Maine pay access charges. Fairpoint Communications Corp. shall notify the Commission of any change in its underlying carrier within 30 days following the change, and shall provide the Commission with certification by the new underlying carrier that it will pay access charges, except that certification is not required if the underlying carrier is AT&T, MCI WorldCom or Sprint. Fairpoint Communications Corp. shall immediately inform the

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Diamond



## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.